

ENTERED

January 15, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

M.D. bnf STUKENBERG

v.

GREG ABBOTT

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No. 2:11-CV-00084

ORDER

Defendants Cecile Erwin Young and Stephanie Muth shall bring to the hearing set on Monday, January 22, 2024 (*see* D.E. 1485), any and all documents related to studies or plans to implement the recommendations in the Expert Panel Report on children without licensed placement (D.E. 1166), including, but not limited to, the following:

1. Any and all documents demonstrating set(s) of shared values and principles referenced in “Follow Up to HHSC-DFPS Response to Expert Panel Recommendations” (all subsequent requests refer to this document).¹
2. Any and all minutes from each interagency meeting referenced in the second response.
3. Any and all workflow documents referenced in the response as to the interagency team.
4. Any and all documents demonstrating “lead and lag measures” developed for clinical coordinators regarding youth in unlicensed placements, and any and all documents related to the State’s performance based on the lead and lag measures they created.
5. Any and all documents described as completed by DFPS as an analysis and report of out of state placements.


¹ For the convenience of the parties, a copy of this document is attached hereto as Attachment A.

6. Any and all documents created by DFPS Community Liaison to the 4 regions that have the highest number of children without licensed placement.
7. Any and all documents created by or for the Deckinga Group for technical assistance in areas identified in the Report including, but not limited to, any and all documents reporting results in these areas.
8. Any and all documents related to the creation and ongoing function of the state interagency plan expanding the Turning Point Program to additional counties with the greatest need.
9. Any and all documents reflecting results of funding request(s) for a pool of funds in each region that can be accessed quickly for trauma informed services and supports to families, kin caregivers and foster parents beyond traditional outpatient therapies. Include any and all documents used to create the amount requested.
10. Any and all documents evidencing the development of a plan for increasing the availability of treatment foster care. Documentation of any results of providers' applications for TFFC open enrollment, including any costs and benefits analysis.
11. Any and all documents reflecting requests for increased resources to provide three new "in-lieu-of services," including applications for expansion of capacity.
12. Any and all documents describing changes to "YES Waiver" referenced, and any and all documents describing the results and use of this program.
13. Any and all documents demonstrating additional providers added since the increase of daily rates for the RTC Project, and any and all documents demonstrating request(s) by HHSC for increased funding to support development of a database for the RTC Project.
14. Any and all documents related to HHSC's feasibility study of the Expert Panel's MCOT recommendation, and any and all documents related to the decision not to move forward.

15. Any and all documents related to efforts to implement the federal “Family First Prevention Services Act,” including any and all documents relating to those Texas-based providers licensed as “QRTPs.” Any and all documents regarding applicants selected and the results of these programs.
16. Any and all documents related to recruiting and contracting for targeted placement options that meet the specific needs of children at risk of being in unlicensed placement, including any and all documents demonstrating an increase of TEP, TLP, IPSP, and any additional options under consideration.
17. Any and all documents demonstrating ongoing MCOs’ plans to begin offering “three in-lieu-of services,” including results and the number of PMC children reached.
18. Any and all documents involving the establishment of DFPS and HHSC’s accelerated “Foster Care Modernization Project,” including those documents demonstrating the results of this program as well as the number of PMC children reached, and further including documents demonstrating the “new methodology.”
19. Any and all documents demonstrating the results of the \$31.2 million appropriated for the agency’s behavioral health requests. This includes any and all documents allocating these funds, as well as the use and effectiveness of these funds.
20. Any documents demonstrating any attempt by DFPS and HHSC to increase the per diem of kinship placement. This order includes any and all documents demonstrating efforts to improve kinship care, including collaboration with community partners.
21. Any and all documents demonstrating consultations with other state agencies regarding the use of “family group conferencing,” as well as community providers.

22. Any and all documents evidencing the creation of an action plan to expand engagement and co-creation efforts with individuals with lived experience. This order includes any and all documents demonstrating the results of these efforts, as well as the number of PMC children affected.

SIGNED and ORDERED this 15th day of January, 2024.



JANIS GRAHAM JACK
SENIOR UNITED STATES DISTRICT JUDGE

ATTACHMENT A

Follow Up to HHSC-DFPS Response to Expert Panel Recommendations

| Recommendations | Recommendation Referenced in February 2022 Joint Response by HHSC/DFPS | Responsible Agency | Status | Detailed Status |
|---|---|--------------------|----------|--|
| Develop guiding principles. | The leadership of DFPS and HHSC should immediately adopt and apply a set of shared values and principles to all work with children and families. (Recommendation 1) | DFPS/HHSC | Complete | The Commissioners of DFPS and HHSC created a set of shared values and principles and shared with the Court Monitors. |
| Strengthen infrastructure and accountability. | Assign a single high-level leadership position from DFPS to lead a dedicated state interagency team to be accountable for the elimination of children being placed in unlicensed care. (Recommendation 2) | DFPS | Complete | HHSC and DFPS executive leadership meet regularly for state interagency coordination. An interagency team was also formed that includes representatives from HHSC and DFPS. Deputy Commissioner serves as DFPS lead. |
| | DFPS to assign clinical coordination services to all youth in unlicensed care. (Recommendation 3) | DFPS | Complete | All Clinical Coordinators positions were filled by May 2022. A workflow was developed in conjunction with the Interagency Team. In February 2023, Clinical Coordinators were moved under CPS Director of Conservatorship Services to align with the Placement division. |
| | Develop a cadence of accountability within the state interagency team to measure "lead and lag measures" and establish targets for reduction of children in unlicensed care. (Recommendation 4) | DFPS | Complete | Lead and lag measures were developed for Clinical Coordinators use regarding youth in unlicensed placement. Measures have been shared with the Court Monitors. Clinical Coordinators have been trained on how to capture and document data regarding these measures. |
| | The DFPS and HHSC Interagency Team should complete an analysis of the data on the more than 2100 times a child experienced an out-of-state placement during the 2021 calendar year. (Recommendation 5) | DFPS | Complete | DFPS completed an analysis and report on out-of-state placements. |
| | Assign a DFPS Community Liaison to the four regions that have the highest number of children without placement, to build community capacity to prevent placements in unlicensed care and to transition children out of unlicensed care into safe settings. (Recommendation 6) | DFPS | Complete | As of May 9, 2022, Community Liaisons began their work in Regions 3 (Dallas/Fort Worth area), 6 (Houston area), 7 (Austin/Central Texas area) and 8 (San Antonio area). The Community Liaisons' primary focus was to work across sectors to educate caseworkers, families and providers about the services and supports available to prevent a crisis. As children are moved into licensed placements, the role of the Community Liaisons includes assisting with the facilitation of discharge meetings/discharges for foster children in acute, subacute and qualified residential treatment programs (QRTPs) within their respective regions. In early February 2023, the Community Liaisons and Clinical Coordinators were transitioned to the direct supervision of the CPS Director of Conservatorship Services – a move that intentionally aligned these two teams with the CPS Placement Division given their necessary hand-in-hand coordination. |
| | Increase the capacity of the DFPS leadership team by gaining technical assistance with an external consultant (or team) with direct experience in child welfare systems. (Recommendation 7) | DFPS | Complete | DFPS contracted with Deckinga Group for technical assistance in the following areas: <ul style="list-style-type: none">• Daycare policy and practice• Treatment Foster Care• Adoption, Post-Adoption and Post Permanency• Foster Care Rate Modernization• Placement workload capacity• Supporting and Maintaining placement capacity• Quality placement transitions and• Agency vision for future of foster care The Deckinga Group and Casey Family Programs also heavily supported DFPS with efforts related to Kinship and the Expert Panel's recommendations. |
| | Within 30 days, HHSC/DFPS and the state interagency team should develop a plan to expand the Turning Point Program to additional counties with the greatest need. (Recommendation 8) | DFPS/HHSC | Complete | Expansion Plan finalized March 2022. |
| | DFPS and the state interagency team should designate a pool of funds in each region that can be accessed quickly for trauma-informed services and supports to families, kin caregivers and foster parents beyond traditional outpatient therapies. In the joint response, the agencies stated "DFPS and HHSC (by virtue of participation in the interagency team) intend to implement this recommendation to the extent possible with existing resources and legislative authority." (Recommendation 9) | DFPS/HHSC | Complete | A request for funding was included in DFPS's Legislative Appropriation Request for the 88th session. Appropriations are limited to SSCC's in the amount of \$1.5 million per fiscal year. |

Follow Up to HHSC-DFPS Response to Expert Panel Recommendations

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| Expand family-based placement options and access to flexible non-placement resources. | DFPS and the state interagency team should reach out to providers to develop a plan for increasing the availability of treatment foster care (TFC), starting in regions with the highest number of children in unlicensed care. (Recommendation 10) | DFPS | Complete | DFPS has ongoing communication with providers to develop a plan for increasing the availability of treatment foster care. On June 9, 2022, Casey Family Programs, the Alliance and DFPS hosted a Treatment Foster Care Symposium to educate providers on treatment foster care practices and program parameters to maintain fidelity to the model. The CPS Placement Division continues efforts to expand Treatment Foster Family Care (TFFC) services to other interested child-placing agencies. On July 8, 2022, the TFFC Open Enrollment was posted. Five full applications were received from providers who did not provide TFFC services before that date. Several other providers reported being the in the process of completing the application. as of April 27, 2023, Texas DFPS has placed a total of 795 unique children into TFFC homes, including both those placed directly through the DFPS Legacy system, and those placed through SSCCs. There are 179 children and youth placed in TFFC homes, and the state has 392-bed total capacity. |
| | HHSC should identify the existing partial hospitalization programs with the highest potential for expansion and begin negotiation to procure more slots. In the joint response, HHSC stated, "HHSC intends to explore provider capacity to expand partial hospitalization services that may exist across the state. To implement capacity expansion, HHSC would need additional resources. Additionally, HHSC has already requested approval from CMS for Managed Care Organizations ("MCOs"), including the STAR Health MCO, to be able to provide partial hospitalization as an in-lieu-of service (See Response #18, below)." (Recommendation 11) | HHSC | Complete | As of December 1, 2022, Texas Medicaid adopted managed care contractual requirements that allow MCOs to provide three (3) new in-lieu-of services in phase one: <ul style="list-style-type: none">• Partial Hospitalization,• Intensive Outpatient, and• Coordinated Specialty Care (CSC) services. Further expansions of capacity would require additional resources. Partial hospitalization refers to a structured day program of outpatient psychiatric services located in a hospital-based setting. |
| | HHSC should develop a plan to increase access to the YES Waiver for youth in unlicensed care. In the joint response, HHSC stated "HHSC intends to develop a plan to increase access to the YES waiver program." (Recommendation 12) | HHSC | Complete | The YES Waiver was renewed by CMS effective April 1,2023 and includes several changes to improve access to services for youth and families and expands provider qualifications. As of April 1, those currently on a waitlist for psychiatric or residential care, or those in DFPS conservatorship are eligible to be served under a reserve capacity slot even if a YES Waiver provider is at full capacity. The YES Waiver program remains actively involved in a provider recruitment project with UTHSCSA and Dr. Matthew Brown with the goal of expanding provider networks. HHSC has improved access to services by removing geographical barriers for youth engaging in telehealth services. Providers are no longer required to work within 30/75 miles of the youth's residence in order to serve them. |
| | Convene a provider working group with DFPS, HHSC and M.D. V. Abbott court monitors to begin to rebuild the relationships needed to address the immediate crisis and to create the capacity needed for the future. (Recommendation 13) | HHSC | Complete | A working group was formed and DFPS and HHSC participated in discussions with the provider working group. The group's work has concluded and a final report was issued on May 19, 2023. |
| | Increase resources, access, and flexibility to the HHSC Residential Treatment Center (RTC) Project. HHSC has analyzed this recommendation and identified several short-term and counterchallenges related to the expansion of the RTC Project. In the joint response, HHSC expressed an intent to develop a plan within 90 days to identify (1) specific challenges related to increasing resources, access, and flexibility to the RTC Project; and (2) options to overcome these challenges. (Recommendation 14) | HHSC | Complete | <ul style="list-style-type: none">• The RTC Project now allows providers to bill at the DFPS Intense Plus daily rate of \$400.72 per day as of March 2023 which should allow additional placements from referrals received to reimburse providers for the services and supervision needs for higher acuity children.• HHSC-BHS's TAC rule has been adopted, effective April 11, 2023.• HHSC's request for funding to support development of a database for the RTC Project was not approved during the 88th Legislative Session. |
| | HHSC to explore Medicaid option for mobile crisis. Mobile crisis is an existing service currently available in Texas Medicaid through the Mental Health Rehabilitation benefit. In the joint response, HHSC stated " HHSC intends to explore the feasibility of Medicaid options for mobile crisis beyond existing services. Expansion of these services would be subject to available funding and CMS approval. HHSC is also working to expand the Turning Point program that includes mobile crisis services." (Recommendation 15) | HHSC | Complete | HHSC completed a feasibility study for the Expert Panel's MCOT recommendation and at this time no decision has been made to move forward. 88R appropriations to HHSC include 3 mobile crisis units (\$6.0M) for children served by DFPS. |

Follow Up to HHSC-DFPS Response to Expert Panel Recommendations

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| Eliminate barriers and expand the service array for children and families. | Accelerate efforts to implement the federal Family First Prevention Services Act so that Texas-based providers who are ready to be licensed as qualified residential treatment programs (QRTPs) can launch. (Recommendation 16) | DFPS | Complete | Open enrollment began in April 2022 and was amended in August 2022 to clarify contract requirements. In November 2022, four applicants were selected to be awarded these grants. DFPS intends to issue an additional Q RTP incentive Accreditation Grant (Request for Applications) RFA to utilize the remaining Family First Transition Act funds at the closure of the current RFA, which is anticipated to be released in late Spring 2023. Two Q RTP contracts were awarded on May 18, 2023. A third Q RTP contract is anticipated to be awarded in June 2023. DFPS is in the process of completing the federal eligibility requirements for placement of children into one of the two available Q RTP settings. |
| | Develop a means of recruiting and contracting for targeted placement options that meet the specific needs of children at risk of being in unlicensed placement. (Recommendation 17) | DFPS | Complete | DFPS continues to partner with providers, HHSC, and the interagency team. DFPS plans to build capacity include: <ul style="list-style-type: none">• Temporary Emergency Placement (TEP) Program• Transitional Living Programs (TLP)• Intensive Psychiatric Stabilization Program (IPSP)• HB 5 Capacity Grants (23 in total, awarded to 10 GPAs and 13 GROs)• Additional opportunities are under consideration. |
| | HHSC should establish Medicaid expansion through continued efforts with CMS to get Phase One Medicaid expansion services approved and available. In October 2021, HHSC requested CMS approval to implement certain Phase One services, including Partial Hospitalization Services, Coordinated Specialty Care Services, and Intensive Outpatient Program Services. HHSC has not yet received a final response to this request. HHSC was unable to agree to establish in lieu of services by the proposed timeline, because the timeline was dependent upon CMS approval. After receiving CMS approval, HHSC intends to begin adopting MCO contract amendments and ensuring other implementation steps are taken including system changes, training staff, updating materials, identifying service providers, and educating providers and members. (Recommendation 18) | HHSC | Complete | HHSC published a new Uniform Managed Care Manual (UMCM) amendment, UMCM 16.3, effective December 1, 2022, to allow MCOs to begin offering three in-lieu-of services: partial hospitalization, intensive outpatient program services, and coordinated specialty care services. HHSC surveyed MCOs and found that almost all MCOs plan to offer partial hospitalization and intensive outpatient services and the majority plan to offer coordinated specialty care as in-lieu-of services. HHSC continues to work with CMS and to analyze the remaining services approved by the State Medicaid Managed Care Advisory Committee (SMMCAC). |
| Develop a statewide children's mental health system of care. | Accelerate, as is allowed by law, the Foster Care Modernization Project developed jointly by HHSC and DFPS. (Recommendation 19) | DFPS/HHSC | Complete | DFPS and HHSC accelerated the Foster Care Modernization Project and finalized a report that includes pro forma modeled rates using a new methodology, released March 6, 2023. 88R appropriated funds with an implementation date of January 1, 2025. |
| | | DFPS/HHSC | Complete | The 88R Legislative Session appropriated \$31.2 million for the agency's behavioral health requests: <ul style="list-style-type: none">• \$21.1M for IPSP• \$3.0M for increasing SSCC's mental health capacity for kinship• \$6.0M for 3 mobile crises outreach teams for DFPS children (funding is appropriated to HHSC)• \$1.2M for DFPS's Behavioral Health team• In addition to funding, HHSC is also directed to prioritize 20 inpatient beds for DFPS children |
| | Texas should begin immediately to identify the resources and coordination efforts needed to finally meet the mental health needs of children and youth. (Recommendation 20) | DFPS/HHSC | Complete | HHSC and DFPS worked together on an improved statewide children's mental health system of care. Texas System of Care (TXSOC), is a statewide framework and approach to strengthen state and local efforts to weave mental health supports and services into seamless systems of care for children, youth, young adults, and their families. DFPS added a Chief Strategist for Behavioral Health to lead continued efforts. |

Follow Up to HHSC-DFPS Response to Expert Panel Recommendations

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|--|--|--------------------|----------|---|
| Develop and strengthen child welfare practice to align with guiding principles and practice model. | DFPS should take the following steps to increase the use of and support for kinship care: <ul style="list-style-type: none">• Assess current practice and policy related to relative care.• Request funds to increase rates for kinship care so they are equivalent to rates for non-kin foster care.• Seek changes in policy that will allow for greater support of kinship families with both concrete and mental health services.• Get external TA to educate stakeholders, including the courts, on the benefits of kinship care.• Adopt a relative-first placement strategy and build practices to support it. Develop a robust family-finding approach utilizing skilled workers and supportive technology.• Adopt the recommendation of the Child Protection Roundtable to appropriate funding for a kinship caregiver support pool from the American Rescue Plan Act funds, directing this funding "with particular emphasis on kinship caregivers serving high-needs children requiring specialized services" and for providing training and supports to these caregivers so they can provide a treatment foster care level of services. (Recommendation 21) | DFPS | Complete | Texas Family Code limits Kinship reimbursement rate to "no more than 50%" of the basic foster care rate (currently \$27.07) per day. The historic kinship rate (\$11.55 per child, per day) was based on appropriations and forecasting for the foster care population. Given the number of youth coming into DFPS conservatorship (and thus, kinship placements) has decreased, the Kinship rate was approved to increase, effective September 1, 2022, to \$12.67 per child, per day. DFPS participated in a collaborative Steering Committee with community partners, including HHSC, which helps connect youth in kinship placements with often needed mental and behavioral health services. DFPS continues efforts to improve kinship care in Texas, including ongoing collaboration with community partners, streamlining policies and processes that support kinship verification and exits from foster care with relatives when reunification is not appropriate. |
| | DFPS should engage with an expert consultant on family team meetings to recalibrate and reinvigorate Texas' use of family group conferencing (FGC) as a key strategy for improving engagement of families and safety and permanence for children. (Recommendation 22) | DFPS | Complete | DFPS consulted with multiple other state agencies and continues to seek additional family-driven models, including engagement of community providers that support the family as the center of the decision-making process. While DFPS continues to utilize components of Family Group Decision Making (FGDM), including FGCs, DFPS is expanding the usage of Collaborative Family Engagement (CFE). Like CFE, FGDM, places the family/community at the center of the decision making process for the child's well-being. CFE's first family meeting can be performed in conjunction with the Family Group Conference. The family and youth driven collaboration focuses on building lasting and meaningful connections, which often lead to placements. Even in situations where connections are not able to immediately be a placement option, they remain a vital support to youth in care. |
| | DFPS should create an action plan to expand engagement and co-creation efforts with individuals with lived experience. (Recommendation 23) | DFPS | Complete | DFPS developed a plan to increase engagement. On October 25, 2022, CPS met to draft an action plan to increase involvement with the Parent and Kinship Collaboration Groups and the Youth Leadership Council. The plan outlines how CPS intends to further engage the voice of lived experience, including examples such as: <ul style="list-style-type: none">• Invite Regional and State Office leadership to attend regional and statewide events to ask questions and get feedback from our lived experience group.• Include our lived experience groups on a wider range of projects, workgroups, and policies.• Seek input from our lived experience groups at the beginning of projects, workgroups, and policies that would directly impact the group they represent.• Send communication to close the feedback loop to our lived experience groups that are outside of policies, projects, and workgroups. |